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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,545	02/06/2004	Andy Wachter	WACHTR 3.0-001	6473
530	7590	11/27/2006		
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER KARLS, SHAY LYNN	
			ART UNIT 1744	PAPER NUMBER

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/773,545	Applicant(s) WACHTER, ANDY	
	Examiner Shay L. Karls	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7, 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufmann (USPN 3582140).

Kaufmann teaches a brush comprising a shaft (5) with a first end and a second end. The first end is smooth and the second end comprises bristles (4) extending outwardly (claim 5). The shaft is comprised of two strands of intertwined steel (figure 4) (claim 9). The brush has a loop at the second end; the loop has bristles extending outwardly in a direction away from the first end of the shaft (figure 2) (claim 11). There is further a cloth material disposed on the end of the bristles (col. 2, lines 16-21) (claim 12). The brush further comprises a protection element (2) on the second end of the shaft (claim 13). Kaufmann teaches all the essential elements of the claimed invention however fails to teach the exact dimensions of the shaft and bristles (claims 5-7 and 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kaufmann so that the shaft is 16-18 inches long and has a diameter of 3/8 of an inch and so that the bristles are in the range of 4-6 inches long since the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A device having the claimed relative dimensions would not perform differently than the prior art

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device and therefore, the claimed device is not patentably distinct from the prior art device.

MPEP 2144.

Claims 5-7, 9-10, 13, 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glas (USPN 3165362).

Glas teaches a brush comprising a shaft (1) with a first end and a second end. The first end is smooth and the second end comprises bristles (13) extending outwardly (claim 5). The shaft is comprised of two strands of intertwined steel (figure 4) (claim 9). The brush further comprises a protection element (16) on the second end of the shaft (claim 13). There is a wedge (16, 20) for forcing the bristles in a direction away from the first end (claim 15). There is a top element (16) fastened to the second end of the shaft. There is a second plurality of bristles (21, 22) angled outwardly and away from the first end of the brush (claim 16). Glas teaches all the essential elements of the claimed invention however fails to teach the exact dimensions of the shaft and bristles (claims 5-7 and 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Glas so that the shaft is 16-18 inches long and has a diameter of 3/8 of an inch and so that the bristles are in the range of 4-6 inches long since the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A device having the claimed relative dimensions would not perform differently than the prior art device and therefore, the claimed device is not patentably distinct from the prior art device. MPEP 2144.

Claims 5-7, 9-10, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer (USPN 2633592).

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Meyer teaches a brush comprising a shaft (14) with a first end and a second end. The first end is smooth and the second end comprises bristles (12) extending outwardly (claim 5). The shaft is comprised of two strands of intertwined steel (figure 2) (claim 9). The brush further comprises a protection element (16) on the second end of the shaft (claim 13). There is a locking hub disposed on the first end of the shaft (24) (claim 14). There is a wedge (16) for forcing the bristles in a direction away from the first end (claim 15). There is a top element (16) fastened to the second end of the shaft. There is a second plurality of bristles (18) angled outwardly and away from the first end of the brush (claim 16). Meyer teaches all the essential elements of the claimed invention however fails to teach the exact dimensions of the shaft and bristles (claims 5-7 and 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Meyer so that the shaft is 16-18 inches long and has a diameter of 3/8 of an inch and so that the bristles are in the range of 4-6 inches long since the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A device having the claimed relative dimensions would not perform differently than the prior art device and therefore, the claimed device is not patentably distinct from the prior art device. MPEP 2144.

Claims 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner et al. (USPN 5599225).

Warner teaches a brush comprising a shaft (35) with a first end and a second end. The first end is smooth and the second end comprises bristles (23, 24) extending outwardly (claim 5). The bristles are made from nylon (col. 4, lines 30-33) (claim 8). The shaft is comprised of two strands of intertwined steel (27, 28) (claim 9). Warner teaches all the essential elements of the

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claimed invention however fails to teach the exact dimensions of the shaft and bristles (claims 5-7 and 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Warner so that the shaft is 16-18 inches long and has a diameter of 3/8 of an inch and so that the bristles are in the range of 4-6 inches long since the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A device having the claimed relative dimensions would not perform differently than the prior art device and therefore, the claimed device is not patentably distinct from the prior art device. MPEP 2144.

Response to Arguments

Applicant's arguments, filed 9/18/06, with respect to Rivera (USPN 5809601) have been fully considered and are persuasive. The rejection of has been withdrawn.

Applicant's arguments filed 9/18/06, with respect to Kaufmann, Glas, Meyer and Warner have been fully considered but they are not persuasive.

The applicant argues that Kaufmann, Glas, Meyer and Warner fail to teach that the first end of the shaft is adapted to be engageable with a power tool.

While the applicant argues that the references are not adapted to be engageable with the power tool, the applicant is not positively reciting the limitation of a power tool in the claim. The claims are directed to a brush, not to the use of the brush. The recitation that the brush is used for cleaning or polishing tire rims with a power tool has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness

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but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

The references brushes teach all the structural limitations of the brush. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The limitation that the brush is adapted to be engageable with the power tool holds no patentable weight since the adaptor, which connects the brush and the power tool is not claimed. Additionally, the actual power tool itself could be type of motorized tool (examples: drill, toothbrush, blow dryer, etc). Therefore, given a lack of limitations regarding the tool and the adaptor, the references brushes are capable of being attached to any type of motorized tool by any means possible. The first end of the references could be attached to a drill by adhesive tape.

The examiner would like to point out to the applicant that the first end of the Warner reference actually is capable to attaching to a power tool (col. 1, lines 8-13) even though it is not required by the claim.

The applicant additionally argues that Kaufmann, Meyer and Warner fails to teach that the first end of the shaft is smooth.

The references all teach smooth first ends. There are no abrasive portions on the ends. While the first ends of Kaufman and Meyer are circular in shape, the outer surface of the circle is smooth. There are no discontinuations along the outer surface of the first end and therefore, the first end can be considered smooth. With regards to Meyer, the applicant states that since Meyer

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is attached to a hollow handle with a pin, the first end cannot include a smooth surface. The brush does not need to be attached to the handle and could be used without the handle and thus without the pin. The first end of just the brush then has a smooth outer surface without any discontinuations. Regarding Warner, the reference teaches a first end with three or six flat sides. The first end of Warner closely resembles the first end of the present invention, wherein the first end of the present invention is considered to be smooth. The present invention appears to have a first end with a plurality of flat sides similar to Warner. Each flat side is considered to be smooth thus making the first end of Warner smooth.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Karls whose telephone number is 571-272-1268. The examiner can normally be reached on 7:00-4:30 M-Th, alternating F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



SLK
11/17/06



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